

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

8
9 Plaintiff,

10 v.

11
12 FABIAN VAKSMAN,

13 Defendant.
14

NO. CR-09-0059-JLQ

**ORDER DENYING MOTION TO
DISMISS**

15 **BEFORE THE COURT** is the Defendant's Motion to Dismiss Indictment for
16 Lack of Elements (Ct. Rec. 49), to which the Government has responded in opposition
17 (Ct. Recs. 54 & 67). The court heard oral argument on the Motion on June 5, 2009. For
18 the reasons stated herein, the Motion to Dismiss is **DENIED**.

19 The Defendant's pretrial motion, interpreted by the court as being made pursuant
20 to Fed. R. Crim. P. 12(b)(2), moves the court to dismiss the Indictment for lack of
21 elements of the underlying crime. The court must presume the truth of the allegations in
22 the charging instruments. *United States v. Caicedo*, 47 F.3d 370, 371 (9th Cir.1995);
23 *United States v. Buckley*, 689 F.2d 893, 897 (9th Cir.1982), *cert. denied*, 460 U.S. 1086
24 (1983). In addition, "[a] defendant may not properly challenge an indictment, sufficient
25 on its face, on the ground that the allegations are not supported by adequate evidence."
26 *United States v. Mann*, 517 F.2d 259, 267 (5th Cir.1975), *cert. denied*, 423 U.S. 1087
27 (1976). "A motion to dismiss the indictment cannot be used as a device for a summary
28 trial of the evidence.... The Court should not consider evidence not appearing on the face

1 of the indictment.” *United States v. Marra*, 481 F.2d 1196, 1199-1200 (6th Cir.), *cert.*
2 *denied*, 414 U.S. 1004 (1973).

3 The Indictment (Ct. Rec. 1) is facially sufficient. Inquiry into the factual *mens rea*
4 of the Defendant at this juncture is premature, and the court will not summarily try the
5 evidence. *See Marra*, 481 F.2d 1199-2000. Taken as true pursuant to *Caicedo*, the
6 allegations in the Indictment properly allege all requisite elements of 18 U.S.C. § 875(c).
7 Accordingly,

8 **IT IS HEREBY ORDERED:**

9 The Defendant's Motion to Dismiss Indictment for Lack of Elements (Ct. Rec. 49)
10 is **DENIED**.

11 The Clerk is hereby directed to enter this Order and furnish copies to counsel.

12 **DATED** this 16th day of June, 2009.

13 s/ Justin L. Quackenbush
14 JUSTIN L. QUACKENBUSH
15 SENIOR UNITED STATES DISTRICT JUDGE
16
17
18
19
20
21
22
23
24
25
26
27
28